

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STANLEY BELLAMY,

97 CV 3039

Petitioner,

-against-

MEMORANDUM
AND
ORDER

CHRISTOPHER ARTUZ, Superintendent,
Greenhaven Correctional Facility,

Respondent.

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STANLEY BELLAMY
No. 87-A-1668
Drawer B
Stormville, New York 12582
petitioner pro se.

RICHARD BROWN
District Attorney, Queens County
(Robin Forshaw, of counsel)
125-01 Queens Boulevard
Kew Gardens, New York 11415
for respondent.

NICKERSON, District Judge:

Petitioner pro se brought this proceeding for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court denied petitioner's motion for appointment of counsel on June 3, 1997 because it could not determine at the time whether petitioner's claims were likely to be of merit. By letter dated May 7, 1998 petitioner renews his motion for appointment of counsel, or alternatively asks for an extension of time to prepare his response.

Cooper v. A. Sargenti Co., 877 F.2d 170 (2d Cir. 1989), articulates the factors the court must consider before appointing counsel for an indigent litigant:

- (1) whether the indigent's position seems likely to be of substance,
- (2) the indigent's ability to investigate the crucial facts,
- (3) whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder,
- (4) the indigent's ability to present the case or obtain private counsel,
- (5) the complexity of the legal issues,
- (6) the availability of counsel,
- (7) and

special reasons why appointment of counsel would be likely to lead to a more just determination.

In Cooper, the court said that only if, after close scrutiny of the merits of the claim, the court finds it to be of substance should the other criteria be considered. 877 F.2d at 172, quoting Hodge v. Police Officers, 802 F.2d 58 (2d Cir. 1986).

Petitioner raises five grounds in his petition: (1) insufficiency of the evidence, (2) prosecutorial misconduct, (3) shifting of burden of proof to petitioner, (4) denial of § 330.30 motion without a hearing, and (5) ineffective assistance of appellate counsel.

The court has reviewed plaintiff's claims and finds that they are not likely to be of substance. Petitioner failed to raise the first four claims in state court. Those claims are therefore procedurally barred. Petitioner is unlikely to prevail on his fifth claim because he would have to show that the state court's finding that he received effective assistance of appellate counsel was contrary to or an unreasonable

application of clearly established Supreme Court precedent. The court thus does not consider the other factors in Cooper.

The renewed motion for appointment of counsel is denied. Petitioner's request for a ninety-day extension is granted. Petitioner will file his response on or before August 7, 1998.

So ordered.

Dated: Brooklyn, New York
June 22, 1998

Eugene H. Nickerson
Eugene H. Nickerson, U.S.D.J.